

Court of Cassation of the Republic of Armenia

DECISION

Rejection of the Appeal Proceedings

Discussing the appeal of Muayad Rafik Abbas against the State Migration Service of the RA Ministry of Territorial Administration (from now Service) on invalidation the latter's decision number Ռ-17-13-Ա from 12.07.2013 and the appeal on the Court of Appeal's decision on Muayad Abbas and his attorney's case, the Court

FOUND

1. The background of the case

Applying to the Court Muayad Rafik Abbas demanded to invalidate Service decision number Ռ-17-13-Ա from 12.07.2013.

The appeal was rejected by the Administrative Court (Court) by the decision from 14.03.2014.

According to the decision of the Administrative Court of Appeal (Court of Appeal) from 08.07.2014 the appeal of Muayad Rafik Abbas was rejected and the Court decision from 14.03.2014 decision remained unchanged.

The cassation appeal for the given case was presented by Muayad Rafik Abbas and his representative.

2. The Grounds. Justification and the Reasoning of the Appeal

The appeal was presented based on the violation of substantive and procedural norms and in order to ensure the uniform application of the law.

The reasoning of the appeal was that the Court of Appeal has wrongly interpreted Article 5 paragraph 2 of the RA Constitution, Article 33 of the Convention Relating the Status of Refugees, Article 2, Article 10.3 and paragraphs 1-3 of Article 52 of the Law of Refuges of the Republic of Armenia, Article 4.1, Article 37 and Article 63.1 of the Law on Principles of Administration and Administrative Proceedings of the Republic of Armenia, has not applied Article 15.1 of the European Convention on Human Rights and Fundamental Freedoms; Vienna Convention on the Right of Treaties, paragraphs 1 and 2 of Article 33 and Article 42.1 of the Convention Relating the Status of Refugees, Articles 4, 8, 21, 37, 38, 55, 57 of the Law on Principles of Administration and Administrative Proceedings of the Republic of Armenia, Articles 5 and 43 of the RA Law on Legal Acts

that it had to apply, violated Article 15.4 of the RA Judicial Code and Article 27.1 of the RA Administrative Code.

The appeal justifies the afore-mentioned reasons with the following arguments:

The Court of Appeal has neglected the fact that the disputed administrative act on the administrative proceedings does not correspond the standards of RA law; because the Service has not revealed the factual evidence of the case including those in favor of Muayad Abbas; has not revealed the existence of grounded facts that Muayad Abbas may endanger RA state security. The Service has not engaged Muayad Abbas in the administrative proceedings on the disputed case, has not passed an interview with him, has not provided him with an opportunity to express his position on the case, provide evidence and exercise other rights during the proceedings.

The Court of Appeal has not referred to the issue that Muayad Abbas could not be excluded from the refugee status according to the Convention relating the Status of Refugees on Law on Refugees of the Republic of Armenia and the principle of non-repatriation.

The Court of Appeal has not considered that the note from RA National Security Service number 2/2/3-714 from 30.05.2013 cannot be considered as reliable, credible and relevant evidence that Muayad Abbas endangers RA state security since it is based on assumptions. Moreover, the note is considered secret evidence and Muayad Abbas does not have and hasn't had an opportunity to appeal it, which has cause violation of principles of justice and natural administration of justice. The argumentation of the aforementioned is recorded in the decision of the European Court of Human Rights "Chahal against the United of Kingdom" from 25.10.1996.

The Court of Appeal has not considered that the UNHCR has expressed its view on the restrictions of the principle of non-repatriation, particularly meaning that any restriction of human rights from international protection should be interpreted and applied in its limited sense according to the general principles on the exceptions of human rights restrictions.

Along with this, the Court of Appeal has not applied Notification 1 and paragraphs 1 and 2 of Article 33 of the Convention relating the Status of Refugees, the interpretation of the Convention relating the Status of Refugees, Geneva Convention from 12.08.1949 additional protocol on protection of victims during international armed conflicts, conclusion number 6 of the UNHCR Executive Committee, UNHCR Note on Burden and Standard of Proof in Refugee Claims from 16.12.1998.

Besides, the decision of the Court of Appeal contradicts the Court of Cassation decision number ՎՂ/0016/05/08 from 26.12.2008 and the decision of the European Court of Human Rights "Chahal against the United of Kingdom" from 25.10.1996.

The appeal has demanded to overturn the decision of Court of Appeal from 08.07.2014 and change it rejecting the claim.

3. The Justification/Reasoning and the conclusion of the Court of Cassation

Having discussed the appeal arguments on the examining the cassation appeal, the Court of Cassation considers that the proceedings are a subject of refusal for the following reasons:

According to the Article 162 paragraph 1.1 of the Administrative Procedural Code of the Republic of Armenia the appeal proceedings are refused in the case of absence of legal bases prescribed by the same code in the 1st and 2nd paragraphs of the Article 160. According to 1.2 paragraph the same code, the proceedings are refused in the case of absence of legal bases prescribed by the 1st part of the Article 161 of the Administrative Procedure Code.

According to the 1st paragraph of the Article 161 of the Administrative Procedural Code the appeal is accepted to examine when the Court of Cassation concludes that the decision of the Cassation Court on the questions raised in the appeal may have an essential significance for the uniform application of the law, or an apparent court mistake has occurred; there are new or newly revealed circumstances/factors.

According to the paragraph 3 of the Article 158 of the Administrative Procedure Code of the Republic of Armenia, by bringing the appeal basing on the Paragraph 1.2 of the Article 161 of the same Code, the appeal points that certain substantive or procedural norms have been violated and the violation has affected the outcome of the proceedings. However, the arguments of the appeal on the same proceedings are not sufficient to consider the procedural violations and the latter's effect on the outcome of the proceedings are grounded.

According to the 2nd paragraph of the Article 161 of the Administrative Code, the decision of the Cassation Court on the question raised in the appeal may have essential importance for uniform application of the law, particularly, when the same norm was used with contradictory interpretation by lower/subordinate courts in at least two court decisions or when the norm interpretation in the appealed court decision contradicts the constitutional substance of the same norm, revealed by the last paragraphs of the decision made by the Constitutional Court; when the interpretation of norms in the appealed court decision contradicts the interpretation given by decision of the European Court of Human Rights; when the interpretation of any norm in the appealed decision contradicts the interpretation of the same norm given by the decision of the Cassation Court, the Cassation Court considers that there is a development of legal/right problem in reference to the appealed proceedings.

The Cassation Court records that though the appeal has referred to The 26.12.2008 RA Appeal Court Decision number ՎԴ/0016/05/08 and "Chahal against the United

Kingdom" The European Court of Human Rights Decision from 25.10.1996, the contradiction of the Administrative Appeal Court decision to the decision indicated in the appeal is not sufficiently reasoned. Thus, the legal bases prescribed by the paragraph 1.1 of Article 161 of the Administrative Code indicated in the appeal are not reasoned.

Based on the afore-mentioned, the Cassation Court considers that the arguments indicated in the appeal are not sufficient to examine the case according to the Article 161 paragraph 1 of the Administrative Code on taking the appeal into examination. Thus according to the paragraph 1.2 of the Article 162 of the Administrative Code the appeal is subject to refusal.

Taking into consideration the aforementioned arguments and based on the Articles 161, 162 and 172 of the Administrative Code, the Appeal Court

DECIDED

1. To reject to examine the appeal against the Court decision number 47/0016/05/08 from 08.07.2014 on Muayad Rafik Abbas and cassation appeal for the proceeding of the latter's representatives.
2. The decision enters into force since its adoption and is not a subject for appeal.